

### REMARKS

Claims 1-3 were rejected under 35 U.S.C. §112, second paragraph. The claims have been amended to correct an element which lacked antecedent basis.

Claims 1-3 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,408,598 to Stockley ("Stockley").

Claims 4-8 were rejected under 35 U.S.C. 103(a) as being obvious in view of Stockley in combination with U.S. Patent No. 6,202,388 to Sanfilippo et al. ("Sanfilippo").

In present claim 1, the sequence of the steps was clarified. In particular, it was clarified that the film is first clamped along an edge, thereafter stretched in a direction extending away from the project, subsequently the tray is raised relative to the upper film and then the edge of the tray and the upper film are sealed. The wording "deformed" was replaced by "stretched" order to clarify how the film is deformed.

Similarly, in present claim 4 the features of the control for controlling the drive mechanism were clarified. It was clarified that the control is constructed such that first the upper film is clamped, thereafter the upper film is stretched and then the tray is raised before the upper film is sealed to the tray.

Former independent claim 6 was made dependent on claim 4.

It is an object of the invention to provide a method and a device which reliably allow producing a package with a tray and with a product protruding above the upper

rim of the tray. In particular, forming of creases in the upper film and formation of leakages in the sealing seam shall be prevented.

According to the claimed invention, this object is addressed in that the upper film is first clamped and thereafter stretched in a direction extending away from the product before the upper film is sealed to the tray. Since the upper film is already clamped when stretching is performed, creases do not arise in the peripheral region where the sealing is performed. Thus, leakages are prevented from arising. Stretching the upper film in a direction extending away from the product allows packaging of products protruding above the upper rim of the tray.

In independent claim 1, it is now specified that the upper film is first clamped and thereafter stretched and then sealed. In contrast, U.S. Patent No. 6,408,598 (Stockley) discloses a packaging machine and a method for packaging in which a film located above a product is first deformed and thereafter clamped before sealing. The method of packaging disclosed in U.S. Patent No. 6,408,598 (Stockley) has the disadvantage that creases may arise in the peripheral region of the package since the upper film is not clamped when it is deformed. Therefore, in a subsequent step of sealing, leakages may arise in the sealing region, because of the creases (see last paragraph on page 1 of the English application text).

For Stockley to anticipate claim1, it must show each and every element of the claim. Since Stockley does not show this feature of the claim, it cannot anticipate claim 1 or any of the claims which depend therefrom.

U.S. Patent No. 6,202,388 (Sanfilippo et al.) discloses a device and a method for replacing the atmosphere in a container. However, Sanfilippo does not disclose

clamping of an upper film and subsequent stretching of said film. Thus, Sanfilippo does not supply the deficiencies of Stockley. Because the prior art does not show all of the features of the claims (4-8) a *prima facie* case of obviousness has not been demonstrated.

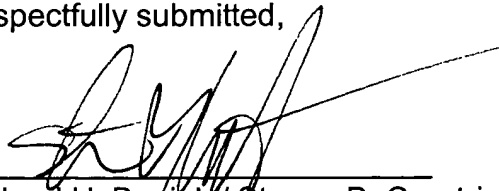
Neither U.S. Patent No. 6,408,598 (Stockley) nor U.S. Patent No. 6,202,388 (Sanfilippo et al.) give any hint or suggestion of the present inventive solution to first clamp an upper film and thereafter stretch this film in a direction away from the product. Therefore, an inventive step was necessary to arrive at the solution defined in independent claims 1 and 4.

Because Stockley and Sanfilippo do not suggest the inventive step set out in claim 4, Stockley and Sanfilippo cannot render obvious independent claim 4, or any claim which depends therefrom. Because the prior does not teach or suggest all of the claim limitations the claims should be allowed. Reconsideration and a notice of allowance is requested.

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